



construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

\* \* \*

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

\* \* \*

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.<sup>1</sup>

Furthermore, pursuant to Tenn. Code Ann. § 65-5-112 (2004), a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned

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<sup>1</sup> Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d). *In the Matter of AVR, LP d/b/a Hyperion of Tennessee, LP Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, (Memorandum Opinion and Order) 14 F.C.C.R. 11,064 (May 27, 1999), (Memorandum Opinion and Order) 16 F.C.C.R. 1247 (January 8, 2001). The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. *See In re Application of Level 3 Communications, LLC to Expand its CCN to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services in all Tennessee Service Areas*, Docket No. 02-00230, *Order Approving Application of Level 3 Communications, LLC to Amend Its Certificate of Public Convenience and Necessity* (June 28, 2002).

telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

### **The April 12, 2005 Hearing**

Public notice of the Hearing in this matter was issued by the Hearing Officer on March 9, 2005, pursuant to Tenn. Code Ann. § 65-4-204. No persons sought intervention prior to or during the Hearing. At the Hearing held on March 12, 2005, Don Baltimore, counsel for Comcast, and David Sered, Vice President of Regulatory Affairs, participated in the Hearing. David Sered presented direct testimony, and was subject to examination by the Hearing Officer. Additionally, the prefiled testimony of John Sullivan, the Vice-President and Chief Counsel for the direct corporate parent of Comcast<sup>2</sup>, was provided with the *Application*. Upon the Company's conclusion of proof in its case, the Hearing Officer granted Comcast's *Application* based upon the following findings of fact and conclusions of law:

#### **I. Comcast's Qualifications**

1. Comcast is a Limited Liability company organized under the laws of Delaware on May 21, 2004.

2. The complete street address of Big River's principal place of business is 1500 Market Street, Philadelphia, Pennsylvania 19102-2148. The telephone number is (215) 665-1700.

3. The *Application* and supporting documentary information existing in the record indicate that Comcast has the requisite technical and managerial ability to provide competing local telecommunications services within the State of Tennessee. Specifically, Comcast's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience

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<sup>2</sup> Comcast Phone II, Inc is the direct corporate parent of Comcast Phone of Tennessee, LLC

4. Comcast has the necessary capital and financial ability to provide the services it proposes to offer.

5. Comcast has represented that it will adhere to all applicable policies, rules and orders of the Authority.

## **II. Proposed Services**

Comcast intends to provide competing facilities-based and resold local exchange and interexchange telecommunications services as a competing telecommunications service provider in Tennessee.

## **III. Permitting Competition to Serve the Public Convenience and Necessity**

Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of Comcast's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

## **IV. Small and Minority-Owned Telecommunications Business Participation Plan and Business Assistance Program**


1. Comcast has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-112 (2004) and the Authority's Rules.

## **V. Compliance with Tennessee's County-Wide Calling Requirements**

Comcast has indicated its awareness of, and its obligation to comply with, the requirements of county-wide calling as set forth in Tenn. Code Ann. § 65-21-114 (2004).

**IT IS THEREFORE ORDERED THAT:**

1. The *Application of Application* of Comcast Phone of Tennessey, LLC, for a Certificate of Public Convenience and Necessity is approved.

  
Randal Gilliam, Hearing Officer